

APPEAL NO. 022709
FILED DECEMBER 9, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 10, 2002. The hearing officer determined that the compensable injury of _____, does not include the appellant's (claimant) lumbar disc herniation after November 15, 2000; that the respondent (carrier) has not waived the right to contest compensability of the claimed (low back) injury because it was not required to contest the extent of the injury in accordance with Section 409.021; and that the claimant did not have disability resulting from the compensable injury. The claimant appeals and the carrier responds, urging affirmance.

DECISION

We affirm the hearing officer's decision.

The claimant, through his attorney, contends that the hearing officer erred in excluding medical records that were not timely exchanged. Admittedly, the documents were not exchanged timely but the claimant indicated that they were exchanged within a reasonable time after she received them. The hearing officer did not admit the exhibits, and determined that a timely exchange had not been made, and concluded that good cause had not been shown for the untimely exchange. We do not find an abuse of discretion by the hearing officer in not admitting the untimely exchanged documents. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ).

Essentially, the claimant quarrels with the manner in which the hearing officer gave weight and credibility to the evidence. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The decision should not be set aside because different inferences and conclusions may be drawn upon review, even when the record contains evidence that would lend itself to different inferences. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

The record in this case presented conflicting evidence for the hearing officer to resolve. In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order.

The true corporate name of the insurance carrier is **TRANSCONTINENTAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Susan M. Kelley
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge